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SUPREME COURT. U. S.

CARL E. eCKERSTROM, A-1521, per se.,
Los Padres, W.,
California, 93401.

Office-Supreme Court, U.S.
FILED
JUN 4 1969
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SUPREME COURT

OF THE UNITED STATES

CORNER 17th AND PENNSYLVANIA AVE.

WASHINGTON, D. C., 20254.

CARL E. eCKERSTROM,
per se.,

Petitioner,

-v-

H.V. FIELD, SUPERINTENDENT,

Respondent.

CLERK'S NO. 196 [redacted]

A PETITION FOR LEAVE TO FILE A WRIT CERTIORARI FROM EXCESSIVE SENTENCE OF A STATE COURT.

ATTORNEY FOR RESPONDENT:

THOMAS C. LYNCH,
Attorney General, State
of California,
600 Capitol Mall,
Civic Center,
Sacramento, California.

PROPRIA PERSONNA

CARL E. eCKERSTROM
A-1521, Los Padres,
California,
93401.

SUPREME COURT OF THE UNITED STATES

TO: The Presiding and Associate Justices of the entitled above court, the petitioner, a state prisoner, seeks leave to file a writ of certioari for relief from excessive sentence from a state conviction.

RULE 23 OF THE SUPREME COURT

(a) A reference of the official and unofficial reports of the opinions delivered in the courts below is under seperate cover as provided by Rule (i) of these Rules.

(b) The groundsare based on the judgment of the courts and sentencing on the basis of the prison authorities.

(1) December 11, 1936, the Superior Court of California in and for the County of Imperial, on two counts of lewd and lascivious conduct in violation of Section 288 Penal Code, sentenced the petitioner to be sentenced to the State Prison at

Folsom, as the law prescribed, the two counts to run concurrently; on two prior convictions adjudged the petitioner to be an habitual criminal.

(i-a) February 8, 1944, the Board of Prison Terms and Paroles of California, fixed the term: "Adjudged habitual criminal; life; parole when 12 years served." (Without the aid of counsel to fix term)

(i-b) April 18, 1950, the California Adult Authority, after a parole violation, reset the petitioner's term back to its original maximum. (No counsel for defense)

(i-c) January 23, 1967, the Superior Court of California in and for the County of San Luis Obispo, ORDERED: "The Adult Authority shall disregard the habitual criminal status of Carl Eckerstrom because the Dyer Act is not one of the prior convictions as a basis for finding habitual criminality. (Page 4, lines 12--31) record.

(ii) As provided in (i) of this Rule,

the dates and opinions of the lower courts are submitted under seperate cover.

(iii) STATUTORY PROVISIONS BELIEVE TO CONFER JURISDICTION ON THIS COURT:

(I) Page 301, Federal Rules of Civil Procedure. (1966)

STATE COURTS: APPEALS: CERTIORARI.

"Final judgment or decree renedered by the highest court of the state in which decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn the question the vailidty of any state statute on the grounds of its being repugnant to the Constitution, Laws or Treaties of the United States, and its decision is in favor of its validity.

(3) By writ certiorari, where the validity of a treaty of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the commission held or authority exercised under, the United States."

In the certified record on page 2, lines 12-13;--

"- - - of 28, U.S.C., Section 2241(c)(3), Federal questions to be asked, and on 8th Amendment, cruel and unusual punishment."

(c) QUESTIONS PRESENTED FOR REVIEW:

(1) Can a sentence be set against a prisoner without the presence or aid of counsel?

(2) Can a parole be suspended without a trial or the aid of counsel?

(3) Can the Adult Authority still hold a prisoner after a voided-term-set had been removed?

(4) Will the United States Supreme Court allow an ante-dated document to influence its judgment? (Exhibit page 9 record.)

(5) Can an adjudication which has affected the substantial rights of a prisoner be tolerated by the United States Supreme Court, and allow the State Courts to deprive a citizen of United States the equal protection of the laws?

(d) CONSTITUTIONAL PROVISIONS WHICH THE CASE INVOLVES.

(1) Page 53, CONSTITUTION OF THE STATE OF CALIFORNIA, AND OF THE UNITED STATES AND AMENDED DOCUMENTS (1966).

EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION:

BAILS: FINES: PUNISHMENTS;

Section 1. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.

(2) Page 55- FEDERAL RULES OF CIVIL PROCEDURE - (1966).

FOURTEENTH AMENDMENT

Citizenship, Representation, Payments of Public Debts.

CITIZENSHIP:

Section (1). All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No state shall make any laws or enforce any laws which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person within its jurisdication of life, liberty, or property, without due process of law;nor deprive any person within its jurisdiction the equal protection of the laws.

Section 5. The Congress shall have the power to enforce by appropriate legislation, the provisions of this Article.
(Proposed June 13, 1866; ratified July 9, 1868; certified July 28, 1969.)

(c) Concise statement of the case.

(1) December 11, 1938, by information filed by the district attorney, the Superior Court of California in and for the County of Imperial, sentenced the petitioner, as the law provides, on two counts of lewd and lascivious conduct, in violation of section 288 Penal Code, the terms to run CC, to the State Prison at Folsom; and on two prior convictions, adjudged the petitioner as an habitual criminal. (Without warning on the issue and without defense counsel.)

(2) February 8, 1944, the Board of Prison Terms and Paroles, at Folsom Prison, set the term: "Adjudged habitual criminal; Life; parole when 12 years served." (No attorney present while sentencing.)

(3) April 18, 1950, after a parole violation, (without counsel) the Adult Authority suspended the parole and returned the sentence back to the original maximum. (Exhibit "A" summary of sentence data on page 9, of the record.

(4) January 23, 1967, the Superior Court of California in and for the County of San Luis Obispo, ORDERED: "The Adult Authority shall disregard the habitual status of Carl Mckerstrom because the Dyer Act is not the proper basis for finding of habitual criminality. (Exhibit of order in actions by by the courts in separate cover.)

(5) After extraordinary writs, the courts maintain that the petitioner is not entitled to relief. (Decisions of the different opinions accompanied with this petition.

(6) The question involved which law the Board of Prison Terms and Paroles used in 1944 to set the term; and can a statute (1168)

which provides for entry of judgment without the consent of the petitioner, the presence of witnesses, nor counsel, be permitted to stand under the Due Process of Law provision of the Constitution?

(7) Review of petitioner's case by this Court:

(1) On page 1, of the record, lines 28 -31; "28 U.S.C., Section 2241 (c) (3) "Where a Constitutional question is involved, the court will examine into it."

(1) Excessive sentence without the aid of counsel;

(2) Parole suspended without the aid of counsel; (page 2, lines 1-7, the record)

(3) Still held after removal of term-set;

(4) Exception to antedated document;

(5) Substantial rights affected by errors.

Now, under the pertinent provisions of a new ruling of the United States Supreme

Court that a denial of legal counsel at sentencing is retroactive and can be heard, the petitioner respectfully submits:

Page 3, lines 21-30 of the record;

(c) Counsel required at sentencing:

"RETROACTIVE".

United States Supreme Court in Mempa v. Rhay, (-----) held

[illegible]

[illegible] Integrity of the [illegible] proceeding. The right to counsel at sentencing must be treated like the right to counsel at other stages of the adjudication."

McConnell v. [illegible]

Stillner v. [illegible]

Section 858 California Penal Code

"- - - at every stage of the proceedings."

(g) The petition was submitted to the United States District Court, Central District of California, filed under [illegible]-348-PH, February 19, 1968; Section 2254 (c) (3), Constitutional questions raised, and quote;

Title of Publication

In re; Osman V. United States., 148 F. 2 752; 325 U.S. 867;

"In speaking of the powers of the court to amend, modify or vacate a judgment," the court stated; "A sentence may be reduced after it has been partly served, but it may not be augmented.

"This is not a jurisdictional question. The rule is applicable to limitations that in criminal cases a sentence partly suffered (served) cannot be increased."

Martin's Crim. Pr. Civ. 9th Ed., Sec. 913.

United States V. Peary, U.S.C. Ct. 304, 306, 307.

Page 21, Lines 16 to 18.

"Also urge that the Subpena to obtain work record card, C.D.C. 103-1-(90904) from the California Men's Colony, west facility, San Luis, California, of Carl Robertson (1943- 1947) as provided in Sec. 1327 C.A.C.

(Those cards were not presented.)

(n) The California Supreme Court has decided the case in a way probably not in accord with applicable decisions of the United States Supreme Court;

(1) It allowed the term to be set without a defense counsel; Hempa V. Rhay--Due Process of Law requires defense at sentencing. (Page 3, lines 10-30, State Supreme Court certified record.)

(2) It allowed parole suspension without defense in violation of the due process clause of the Fourteenth Amendment.

(3) It allowed the Petitioner to be held after a term-set was declared void ab initio.

(4) It erred in allowing an antedated document as evidence at a hearning. (Page 9 of the certified court record.)

(5) It ignored the prejudicial errors which affected the substantial rights of the petitioner. (Page 6, lines 3--31, of the certified record.)

(i) Under seperate cover are the ACTIONS TAKEN FROM MAY 28, 1967, to December 2, 1968.

(j) July 19, 1967, in the Superior Court of California, in and for the County of Imperial the court decided; "-- from the defendant's numerous arrests and trials for various offenses, it appears to this court that the defendant was wellversed in knowing his constitutional right be represented by counsel at the time of entering his plea of guilty to the charges contained in Case No. 3106 of the 1936 Case. . . "

Since the District Court and Supreme Courts of California advanced no opinion, it is clear that none can be given.

The Imperial County Court's opinion is in the envelope marked SUPREME COURT OF CALIFORNIA. Dates from March 10, 1967, to July 19,1967.

In the preperation of this document, the petitioner has strived to comply with the rules of the Supreme Court, and hope that his effort makes some sense.

The petitioner is a man 72 years of age, has little legal knowledge, a cook by trade, and has a little over $3,000.00 (at maturity) In Government War Bonds, Series "E";knowing that a man with the ability to practice law in the Supreme Court expects a fee in accordance with such a profession; therefore the petitioner is going in on propria personna.

Respectfully submitted,

Carl E. Eckerstrom

Carl E. Eckerstrom, A-1521.
Los Padres, West.
California, 93401.

Dated This 25 day of April 1969.
Los Padres, California.

ATTORNEY FOR THE RESPONDENT:

Thomas C. Lynch, Attorney
General for the State of
California.
600 State Building,
Civic Center,
Los Angeles, California.

ACTIONS MAY 28, 1967 to DECEMBER 2,1968.

(1) May 28, 1967, Superior Court of California in and for the County of San Luis Obispo,"5163, "Order Granting Motion."

(2) June 27,1967, to July 19, 1967, The Superior Court of California in and for The County of Imperial on five hearings-/. with order of denial on case #332-3106. (Exhibits in adjoined envelope)

(3) November 24, 1967, the Superior Court of California in and for the County of San Luis Obispo,#5163 denial of writ.

(4-5) November 29 to January 24, 1968, both the District Court and the Supreme Courts of California denied without an opinion.

(6) August 1, 1968, the United States District Court, Central District of California, on # 68-248 FW, ORDER ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS.

(7) August 12, 1968, Thomas C. Lynch, Attorney General of California, "EX PARTE MOTION FOR EXTENSION OF TIME TO RESPONSE."

(8) August 12, 1968, United States District Court; "ORDER GRANTING EXTENSION OF TIME TO RESPOND."

(9) August 29, 1968, "EXPARTE MOTION FOR EXTENTION OF TIME" by Volney V. Brown, Jr., Attorney for Petitioner on "68-248-FW, (California Statutes on last pages of petition)

(10) September 11, 1968, Thomas C. Lynch, Attorney General for the State of California, "RESPONSE FOR WRIT OF HABEAS CORPUS", #68-248-FW, Appended Exhibit "A" SUMMARY OF SENTENCE DATA OF CARL ECKERSTROM.

(11) September 18, 1968, Volney V. Brown Jr., Attorney for Petitioner, on #68-248-FW, MEMORANDUM OF POINTS AND AUTHORITIES.

(12) September 24, 1968, United States District Court, Central District of California, on #68-248-FW, "ORDER DENYING PETITIONS FOR WRIT OF HABEAS CORPUS, AND DISMISSING ACTION." (5pages)

(13) November 14, 1968, United States Court of Appeals, Petition "Undocketed."

(14) December 2, 1968, United States District Court, Central District of California, on #68-248-FW, "ORDER DENYING APPLICATION FOR RECONSIDERATION OF PETITION FOR CERTIFICATE OF PROBABLE CAUSE."

(15) March 26, 1968, the Supreme Court of California denied the writ of habeas corpus without an opinion.

On the 1st day of April 1968, the clerk of the Supreme Court of California mailed a certified copy of the petition to the petitioner, which is enclosed with the petition to the United States Supreme Court with this petition to Washington, D. C.